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EXAMINER

HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/611,682
Filing Date: July 01, 2003
Appellant(s): FALLA ET AL.

MAILED
DEC 01 2006
Group 3700

Charles N.J. Ruggiero, Esquire
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1-31-06 appealing from the Office action mailed 6-30-05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,154,659	GLUCKIN	10-1992
2,915,067	BRACHT	12-1959
5,820,443	BURR	10-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 4-7, 9, 14, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gluckin (US 5,154,659).

Gluckin discloses a method of forming an undergarment as broadly claimed in that the Gluckin garment is an undergarment that is worn under outer clothes. The undergarment of Gluckin is broadly considered to be an undergarment. No parameters describing the specific shape, type or undergarment pattern has been claimed. Additionally, the formation of a two cup breast covering undergarment, as described in the specification and as shown in the figures has not been claimed. Gluckin discloses a method of forming an undergarment by inserting an adhesive layer 80 between first 78 and second 92 fabric layers to form a subassembly (see Gluckin, col. 3, lines 44-51 and figures 3 and 5-11), causing the adhesive layer to form a laminate (Gluckin, col. 3,

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lines 44-51) with heat sealers 94,96 bonding in the claimed areas and removing trim from the outer periphery to form a finished, scalloped edge 109 and wherein the fabric layers include a cotton-blend material. The film of the Gluckin brassiere laminate maintains its stretchability as claimed. (See Gluckin, Abstract).

The Gluckin blank or subassembly has a periphery that is larger than “an” entire outer periphery of the undergarment “as broadly claimed”, in that the garment structure shown in figure 15 is “an” “entire outer periphery” of the undergarment “as broadly claimed” since it has an outer periphery and is a structure that is shown as being worn under a garment. The Gluckin blank or subassembly has a periphery that is larger than “an outer periphery of the undergarment” in that the upper edge of the subassembly as seen in figure 9 is larger than the edge 109 of the undergarment (as seen in Gluckin, figure 15) and the entire edge about the bra half is “an entire outer periphery” that is also less than the blank. The claim does not state that the outer periphery of the undergarment is the entire outer periphery of “the” entire undergarment wherein the undergarment layers are seamless and extend across the wearer including two breast cups and side panels.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 15 and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin (US 5,154,659) in view of Bracht (US 2,915,067).

Gluckin discloses the invention substantially as claimed including the scalloped edge. However, Gluckin does not disclose the adhesive fusible material as being a polyethylene and ethylene vinyl acetate copolymer or the specific film content percentages of polyester, cotton and spandex. Bracht discloses a fusible support material formed of polyethylene material. (See Bracht, col. 2, lines 28-37).

Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassiere of Gluckin with the teaching of Bracht to include a fusible support layer therein to provide support to the breasts of the wearer.

Claim Rejections - 35 USC § 103

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin (US 5,154,659).

Gluckin discloses the invention substantially as claimed. However, Gluckin does not specifically disclose the exact claimed percentages of cotton, polyester and spandex materials. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassiere of Gluckin to construct it of the claimed specific fiber content percentages since it has been held to be within the skill of one of ordinary skill in the art at the time the invention was made to select a known material, such as cotton, polyester and spandex blend which are

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commonly used in garment manufacturing and in undergarment construction and to select such a material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. It also would have been obvious to find the optimum percentage fiber content of each fiber within the material since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. In re Boesch 617.2nd 272,205 USPQ 215 (CCPA 1980).

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin in view of Burr (US 5,820,443).

Gluckin discloses the invention substantially as claimed including a laminated brassiere structured substantially as claimed. However, Gluckin does not specifically disclose the gore reinforcement layer between the first fabric and adhesive layer. Burr discloses a fabric reinforcement fabric 15 located as claimed in order to provide support at the central area of the bra. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassiere of Gluckin to include a central gore fabric reinforcement as disclosed by Burr in order to provide extra support at the central area of the brassiere. (See Burr, col. 2, lines 25-35; col. 4, lines 10-19 and col. 4, line 66 – col. 5, line 39).

(10) Response to Argument

Applicant's arguments on pages 3-5 of the Appeal Brief have been duly considered but are not persuasive. It is the Examiner's position that Gluckin does disclose a laminated material subassembly that is larger than "an" entire undergarment periphery. The present invention broadly discloses the garment as being an undergarment of which the brassiere of Gluckin is. The garment of Gluckin is an undergarment whether it is a full, half or partial undergarment as broadly claimed since an undergarment is a garment that is worn under another outer garment. The entire outer periphery of Gluckin's laminate assembly is larger than "an" undergarment outer periphery" as broadly claimed. Applicant has not claimed "the " entire outer periphery of the undergarment.

Applicant is also arguing more than what has been claimed. The claim states that the subassembly has a periphery that is larger than "an" entire outer periphery of the undergarment instead of "the" entire undergarment. "An" being "one of" and "the" being "the exact one". The present recitation is extremely broad and is interpreted as any outer periphery on the Gluckin brassiere. However, the claim does not accurately claim the present invention. The Advisory Action of 10-14-05 suggested that the exact invention should be claimed to differentiate the invention from the prior art. The present invention discloses a single piece seamless brassiere structure formed from a laminate subassembly wherein the edge periphery is trimmed to form the brassiere edge. Applicant argues the recitation as being "...having an outer periphery that is larger than "the" outer periphery...etc.". This recitation suggests that the subassembly must

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be larger than "the entire brassiere". However, applicant has not claimed it as such. In order to define the brassiere as a whole piece with two cups as argued the brassiere must be claimed as such. Additionally, applicant was informed that the specific brassiere garment should be clearly claimed wherein the brassiere is formed into a single piece seamless brassiere with two cups.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gloria Hale", written in a cursive style.

Gloria Hale, Primary Examiner AU 3765

Conferees:

John Calvert, Supervisory Patent Examiner AU 3765

Alissa Hoey, Primary Examiner AU 3765